IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. REVISION APPLN.NO.101 OF 2007

Shri.Sadanand Shivaji Kadam and Anr. ..Applicants

Vs.

State of Maharashtra ..Respondent

...

Mr.M.S.Mohite advocate for applicants
Smt.A.S.Pai A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 12, 2007

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State. Rule. By consent, Rule made returnable forthwith.

2. The applicants are seeking discharge in the case relating to C.R.No.34 of 2004 of Haveli Police Station. The said case is under Section 302 r.w. 34 of IPC and under the Arms Act. The applicant no.2 is the daughter of applicant no.1.

3. I have perused the material in this case. FIR

was registered on 10.2.2004 at 12 noon. The complainant in the said case i.e. Vishwajeet Danke is the son of the deceased. The incident in the present case took place on 10.2.2004 at 9.30 a.m. It may be stated here that there is a cross complaint. The applicant no.1 is the complainant in the cross complaint and the said case is under Section 307 of IPC.

4. The plots of the applicant no.1 and Anand Danke i.e. father of the complainant were adjoining to each other. There were some disputes between them in relation to the boundaries of the said plots and civil suits came to be filed by the parties. On 8.2.2004, deceased Anand had gone to his plot for carrying out some work in relation to construction of compound wall. At that time, applicant no.1 pointed out a revolver at Anand and said that no work should be done at the site and threatened to murder him. Anand informed this fact on mobile to his son i.e. the complainant. This was informed to the Police at Pune Rural Control Room and the complaint came to be lodged at Haveli Police Station. Thereafter, on 10.2.2004 in the morning at about 9.20 a.m. when work of construction of

the compound wall of the complainant was going on, applicant no.1 came and obstructed the masons who were constructing the wall and threatened them. At that time, the complainant and his father came out of their house. Anand told the applicant no.1 that they should not cause any obstruction in the work and whatever they wanted to do, they should do the same legally. While he was doing so, the applicant and his daughter Shobhana started scuffling with Anand. At that time, applicant no.1 Sadanand Kadam took out a revolver and fired one bullet. The said bullet hit Anand just below the chest. At that time, Anand snatched the revolver from the hand of the applicant no.1. However, immediately thereafter applicant no.2 Shobhana Anpat snatched the said revolver from the hand of Anand. Thereafter, the complainant started crying for help. Then he lifted his father and proceeded towards the hospital.

5. It is the case of the applicants that in fact, the complaint filed by applicant no.1 is first in point of time. The said complaint is under Section 307 of IPC. It is his case that he saw construction work going on and he told Anand not to

construct the wall. At that time, Anand had pushed the applicant no.1 against a stone and Anand had also taken one stone in his hand and hit the complainant on his head with the said stone. At that time, his daughter (applicant no.2) came there and she tried to obstruct Anand but Anand said that he would murder them and he would set the matter right once for all and Anand started giving kick blows to Sadanand. Due to this, Anand fell down. Thereafter, he took out revolver as the complainant and deceased were likely to kill him and therefore, he used his revolver for his protection. The medical certificate of applicant no.1 Sadanand shows that injuries were sustained by Sadanand on the head which led to subarachnoid bleeding.

6. Thus as far as the applicants are concerned, it is their case that the act done by them was done in the right of private defence and hence, no offence is made out and hence, they are liable to be discharged in the present case. However, in my view, it is a question of fact in this case as to whether the applicant no.1 used the revolver in order to commit murder or he used the revolver in the exercise of the right of private defence. This

question can be decided only after considering the evidence and the cross-examinations of the witnesses at the end of trial. Whether the applicant no.1 had a valid licence for holding the revolver is also a question of fact which can be decided after examining the evidence in this regard produced by the prosecution and for this it is necessary to give opportunity to the prosecution to prove its case.

7. Looking to the above facts and on the basis of the material collected by the prosecution, as far as applicant no.1 is concerned, there cannot be only one inference i.e. innocence of the applicant no.1. At this stage, it cannot be said that applicant no.1 is really innocent and he had acted only in order to protect his own property and his person. It is pertinent to note that applicant no.1 came to the spot armed with the revolver. The fact that applicant no.1 had a revolver in his pocket and the manner he used the revolver, is also necessary to be taken into consideration. Thus, after considering the entire material on record, I find that there is sufficient material to proceed as far as applicant no.1 is concerned and hence, he

is not entitled to be discharged in this case.

8. As far as applicant no.2 is concerned, the only role attributed to her is that at the initial stage, she had taken part in the scuffle along with her father and thereafter, after her father applicant no.1 fired shot at the deceased and the deceased snatched the revolver from applicant no.1, she snatched it back from the deceased. It is not the case of the complainant that thereafter she tried to fire from the said revolver at any one or that she even pointed out the revolver at the complainant or his father or that she made any threats to them at the point of revolver. The act of snatching the revolver from Anand by applicant No.2, in the facts of the present case and the cross complaint which is on record appears to be, to avert the deceased firing at the applicants. There is no material on record that she used the revolver in any manner. With regard to firing by Sadanand, the material on record does not show that Shobhana shared any common intention with Sadanand in this regard. Thus, as far as the present case in respect of applicant no.2 is concerned, it cannot be said that there is sufficient material to

proceed against her in this case as Section 302 of IPC would not be attracted to any of the acts done by the applicant no.2.

9. In view of the above, the prayer for discharge made by the applicant no.1-Sadanand Shivaji Kadam is rejected. However, the prayer made by applicant no.2-Shobhana Deepak Anpat is allowed. Applicant no.2-Shobhana Deepak Anpat is discharged in the case relating to Sessions Case No.156 of 2004 arising out of C.R.No.35 of 2004 of Haveli Police Station.

10. Rule is partly made absolute. Revision is disposed of in the above terms.

[SMT.V.K.TAHILRAMANI, J.]